

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF PHARMACY
AND DAVID FRANKLIN, R.PH.**

David Franklin, R.Ph. ("Franklin") and the State Board of Pharmacy ("Board") enter into this settlement agreement for the purpose of resolving the question of whether Franklin's registered pharmacist license will be subject to discipline. The parties jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Pursuant to the terms of § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri. Franklin acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline. Being aware of these rights provided to Franklin by operation of law, Franklin knowingly and voluntarily waives each and every one of these rights freely and enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

Franklin acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. Franklin stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Franklin's license as a pharmacist, License No. 2000174389, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo, as amended.

Joint Stipulation of Facts

1. The State Board of Pharmacy ("the Board") is an agency of the state of Missouri created and established pursuant to §338.110, RSMo, for the purpose of executing and enforcing provisions of Chapter 338, RSMo.
2. David Franklin, R.Ph. ("Franklin") is licensed by the Board as a licensed pharmacist, License No. 2000174389.
3. From November 1, 2004 to December 16, 2004, Franklin worked as a pharmacist at Walgreens, located at 2202 Chambers in St. Louis, Missouri.
4. On or about October 12, 2004, Franklin applied for a renewal of his license as the expiration date of his license was October 31, 2004.
5. Franklin's renewal application was rejected because Franklin failed to sign a page of the renewal form.
6. Therefore, Franklin's license expired on or about October 31, 2004.

7. Franklin re-applied for the renewal of his license in or about November of 2004, and his license was renewed on December 16, 2004.

8. The renewal application specifically notifies that “[i]t is illegal to practice as a pharmacist in Missouri after October 31, 2004, without a current license.”

9. From November 1, 2004 to December 16, 2004, Franklin’s pharmacist license lapsed and thus, Franklin was without a valid pharmacist license.

10. From November 1, 2004 to December 16, 2004, Franklin held himself out as a registered pharmacist and engaged in the practice of pharmacy, including but not limited to verifying prescription orders and dispensing drugs pursuant to prescription orders.

11. From November 1, 2004 to December 16, 2004, Franklin filled prescriptions for controlled substances, including but not limited to Hydrocodone/APAP, Amphetamine, and Diazepam.

Joint Conclusions of Law

12. By failing to renew his license timely, Franklin violated § 338.060.1, RSMo, which states: “Every licensed pharmacist or permit holder who desires to continue in the practice of this profession shall, within thirty days before the license expiration date, file an application for the renewal, which application shall be accompanied by the fee prescribed in sections 338.010 to 338.198.”

13. Section 338.010.1, RSMo, defines the “practice of pharmacy” as follows:

1. The “practice of pharmacy” shall mean the interpretation and evaluation of prescription orders; the compounding, dispensing and labeling of drugs and devices pursuant to prescription orders; the participation in drug selection according to state law and participation in drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records thereof; consultation with patients and other health care practitioners about the safe and effective use of drugs and devices; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy. . . .

14. By engaging in the practice of pharmacy without a valid license, Franklin violated § 338.010.1, RSMo, which states in pertinent part: “No person shall engage in the practice of pharmacy unless he is licensed under the provisions of this chapter.”

15. By holding himself out as a registered pharmacist, Franklin’s conduct alleged herein constitutes a violation of § 338.170, RSMo, which states: “It shall be unlawful for any person not legally licensed as a pharmacist to take, use or exhibit the title of pharmacist, or licensed or registered pharmacist, or the title druggist or apothecary, or any other title or description of like import.”

16. Regulation 21 CFR § 1300.01(33) defines “pharmacist” as follows:

The term pharmacist means any pharmacist licensed by a State to dispense controlled substances, and shall include any other person (e.g., pharmacist intern) authorized by a State to dispense controlled substances under the supervision of a pharmacist licensed by such State.

17. By filling prescriptions for controlled substances while not licensed to do so, Franklin violated 21 CFR § 1306.06, which states: "A prescription for a controlled substance may only be filled by a pharmacist, acting in the usual course of his professional practice and either registered individually or employed in a registered pharmacy, a registered central fill pharmacy, or registered institutional practitioner."

18. Section 338.055, RSMo, in pertinent part, states as follows:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any of the following causes:

* * * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * * *

(13) Violation of any professional trust or confidence;

* * * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

19. Cause exists for the Board to take disciplinary action pursuant to § 338.055.2(6) because Franklin's conduct alleged herein violated §§ 338.010.1, 338.060.1, 338.170, RSMo.

20. Cause exists for the Board to take disciplinary action pursuant to § 338.055.2(13) because Franklin's unauthorized practice of pharmacy alleged herein violated professional trust and confidence his employer places in Franklin by virtue of his status as a state-licensed pharmacist to renew his license in an appropriate timely manner and to retain a valid license at all times working at the pharmacy.

21. Cause exists for the Board to take disciplinary action pursuant to § 338.055.2(15) because Franklin's unauthorized practice of pharmacy alleged herein violated 21 CFR § 1306.06.

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of §§ 338.055 and 621.045.3, RSMo 2000.

1. Franklin's pharmacist license, License No. 2000174389, is immediately placed on PROBATION of a period of two (2) years. The terms of this probation shall be:

A. Franklin shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time Franklin is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work locations he must provide the

Board with all scheduled places of employment in writing prior to any scheduled work time.

B. Franklin shall pay all required fees for licensing to the Board and shall renew his license prior to October 31 of each licensing year.

C. Franklin shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

D. Franklin shall make himself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Franklin will be notified and given sufficient time to arrange these meetings.

E. Franklin's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Agreement.

F. The parties to this Agreement understand that the Board of Pharmacy will maintain this Agreement as an open record of the Board as provided in Chapters 338, 610, and 620, RSMo.

G. If, after disciplinary sanctions have been imposed, Franklin ceases to keep his Missouri license current or fails to keep the Board advised of his current place of employment and residence, such periods shall not be deemed or taken as any part of the time of discipline so imposed.

(1) If, after disciplinary sanctions have been imposed, Franklin begins employment as a pharmacist or technician outside the state of Missouri, such periods shall not be deemed or taken as any part of the time of discipline so imposed. Franklin may petition the Board to seek a waiver for any portion of this requirement by making such a request in written form to the Board for its consideration. No exception will be made to this requirement without prior board approval.

(2) If Franklin leaves the state of Missouri for more than 30 consecutive days, such periods shall not be included as a part of the time of discipline so imposed.

H. Franklin shall provide all current and future pharmacy and drug distributor employers and pharmacist/manager-in-charges a copy of this disciplinary Agreement within five (5) business days of the effective date of discipline or the beginning date of each employment. If at any time Franklin is employed by a temporary employment agency he must provide each pharmacy and drug distributor employer and pharmacist/manager-in-charge a copy of this disciplinary Order/Agreement prior to or at the time of any scheduled work assignments.

I. Franklin shall not serve as a preceptor for interns.

J. Franklin shall not serve as a pharmacist in charge or in a supervisory capacity without prior approval of the Board.

2. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

3. Upon the expiration of said discipline, Franklin's license as a registered pharmacist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Franklin has violated any term or condition of this settlement agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Franklin.

4. No order shall be entered by the Board pursuant to the preceding paragraph of this settlement agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

5. If the Board determines that Franklin has violated a term or condition of this settlement agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this settlement agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this settlement agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this settlement agreement has occurred.

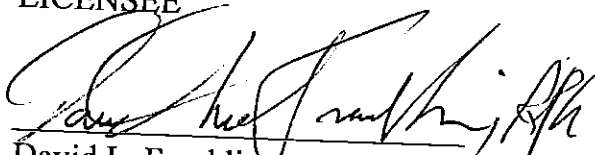
6. Franklin hereby waives, releases, acquits, and forever discharges the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it

survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof void or unenforceable.

7. Franklin understands that he may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the settlement agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Franklin's license. If Franklin desires the Administrative Hearing Commission to review this settlement agreement, Franklin may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

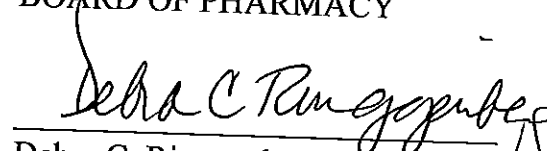
8. If Franklin requests review, this settlement agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the settlement agreement sets forth cause for disciplining Franklin's license. If Franklin does not request review by the Administrative Hearing Commission, the settlement agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE


David L. Franklin
Pharmacist, R.Ph.

Date: 9/19/07

BOARD OF PHARMACY


Debra C. Ringgenberg
Executive Director
State Board of Pharmacy

Date: 9-27-07

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